CIVIL WRIT JURISDICTION CASE No.831 OF 1990

In the matter of an application under Articles 226 and 227 of the Constitution of India.

1. Badar Das
2. Panchu Das
3. Ramdeo Das

All sons of Kulai Das, residents of Village-Kamalpur, Jagir Tola Kaitya, P.S. BNarhara Kothi, District-Purnea

---------- Petitioners

Versus

1. The State of Bihar
2. Additional Member Board of Revenue, Bihar, Patna.
3. Collector, Land Ceiling, Purnea.
5. Smt. Ahilya Devi w/o Umakant Paswan, resident of Kamalpur, P.S. Barhara Kothi, District – Purnea.
6. Akhtar Hussain, son of Ahmad Hussain.
7. Most. Johara Khatoon w/o Ahmad Hussain, resident of village - Kamalpur, District – Purnea.

---------- Respondents

For the petitioners : M/S. B P Pandey, Sr. Advocate, P K Sinha and S C Giri.

For the State : Mr. N K Sinha, AAG 10 and Sanjay Kumar, JC to AAG 10.

For respondent no.4(wrongly typed as 5): Mrs. Asha Verma.

P R E S E N T

THE HON'BLE MR. JUSTICE AJAY KUMAR TRIPATHI

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A K Tripathi, J. Heard learned senior counsel for the petitioner, learned counsel for the State and learned counsel for respondent no.4. A counter affidavit has been filed on behalf of the private respondent No. 4 (wrongly typed as 5 namely, Smt. Ahilya Devi).

2. The origin of the present dispute is an application filed by Ahilya Devi before the court of D C L R claiming a right of pre-emption in her favour under section 16(3) of the Land Ceiling Act.

The application of Ahilya Devi and the assertion that she was the adjoining raiyat was found to be in order and a direction thereafter came to be issued to register the land in her favour within the time specified. This order is annexure-2 to the writ application. An appeal thereafter was filed by the present petitioners challenging that order. The appellate forum after verifying the facts and assertions also came to a concluded opinion that Ahilya Devi was raiyat in her own right and piece and parcel of land based on which she is claiming a right stood in her name by way of purchase made by her. The appeal therefore came to be dismissed in favour of Ahilya Devi. The appellate order dated 16.10.1985 is annexure-3. The petitioners then decided to invoke the revisional power and Revision Case no. 504 of 1985 was filed before the Board of Revenue. While exercising power the Additional Member, Board of Revenue held against the present petitioners and reaffirmed the finding in favour of the private respondent by concurring in this regard. The Court has gone through the revisional order contained in annexure-4 and records that even though Additional Member, Board of Revenue was exercising revisional power, in the larger interest of justice he has gone into all the ambit of the case and counter case and has also discussed the facts and the question raised by both the parties in detail but with preponderance of evidence weighed against the present petitioners it has rightly been concluded in favour of the private respondent. There are concurrent findings against the petitioners by all the forums.

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3. The petitioners now take their fourth chance by filing

this writ application. The first question which is sought to be raised is that it is not in dispute that Ahilya Devi was the daughter in law of one Saryug Hazra and therefore she could not claim right of preemption as a member of the joint family because under the HUF the right existed in favour of Saryug Hazra and not in daughter-in-law. The second contention is that the three petitioners had acquired a right by way of sale deed executed in their favour and they turned out to be adjoining raiyat and they had a better claim over this issue.

4. The submission on behalf of the petitioners is not worthy of consideration for the simple reason that there is no finding by any of the three forums below that the private respondent was claiming right of preemption as part of the HUF. In fact finding is otherwise that she was a raiyat in her own right, based on a purchase, on piece and parcel of land made in her favour. In fact effort has been made by the vested interest to create some more sale deeds to defeat the claim on a subsequent date. The finding has been duly recorded in this regard by the Additional Member, Board of Revenue in paragraph 7 of the order. If the court holds that the first contention urged at the bar on behalf of the petitioners cannot be entertained having no merit despite the same being couched as a question of law then second contention gets answered by itself because if the private respondent has been held to be a raiyat in her own right and her claim for preemption was allowed on that basis, the subsequent purchase or presumption of right of the present petitioners can not come in the way of the order passed in appeal or revision.

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5. There is no merit in the writ application. It stands dismissed.

(Ajay Kumar Tripathi, J)

Patna High Court:
The 25th November, 2008.
NAFR (R K Pathak).

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